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No. 99-62

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IN THE

Supreme Court of the United States

SANTA FE INDEPENDENT SCHOOL DISTRICT,
Petitioner,

v.

JANE DOE, individually and as next friend for her minor children Jane and John Doe, Minor Children; JANE DOE #2, individually and as next friend for her minor child, John Doe, Minor Child; and JOHN DOE, individually,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF AMICI CURIAE OF THE AMERICAN JEWISH CONGRESS, AMERICAN JEWISH COMMITTEE, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, ANTI-DEFAMATION LEAGUE, COUNCIL ON RELIGIOUS FREEDOM, HADASSAH, INTERFAITH ALLIANCE, JEWISH COUNCIL FOR PUBLIC AFFAIRS, NATIONAL PEARL, PEOPLE FOR THE AMERICAN WAY FOUNDATION, SOKA GAKKAI INTERNATIONAL-USA, AND UNITARIAN UNIVERSALIST ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

The *amici* joining in this brief are religious and secular organizations with a special interest in religious liberty. These *amici* offer special expertise in the area of prayer and religious activities in the public schools, and on the impact of this Court's rules on religious belief and practice more generally.

Amici, in agreement with both petitioner and respondent, urge the Court to reaffirm the important distinction between *private* religious expression, permitted and protected by the First Amendment, and *officially-sponsored* religious activity, prohibited by the Establishment Clause. That line has been crossed here, allowing for government-sponsored religious observances in the public school setting, to the detriment of religious believers as well as non-believers.

Because many *amici* have joined in a single brief, the interests of individual *amici* are stated more fully in an appendix. The *amici* joining in this brief are:

The American Jewish Congress, an organization of American Jews founded in 1918 to protect the civil, political, and religious rights of American Jews.

The American Jewish Committee, a national organization of approximately 100,000 members and supporters, founded in 1906 to protect the civil and religious rights of Jews and dedicated to the defense of religious rights and freedoms of all Americans.

Americans United for Separation of Church and State, a national public interest organization committed to preserving

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent have been lodged with the Clerk of the Court. Counsel for a party did not author this brief in whole or in part, and no person or entity, other than the amici curiae, its members, and its counsel, has made a monetary contribution to the preparation and submission of this brief.

separation of church and state and religious liberty.

The Anti-Defamation League, organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial and religious prejudice in the United States.

The Council on Religious Freedom, a non-partisan, non-profit national advocacy group that appears frequently in court on issues of religious freedom and the separation of church and state.

Hadassah, the Women's Zionist Organization of America, Inc., the largest women's and the largest Jewish membership organization in the United States, with over 300,000 members nationwide.

The Interfaith Alliance, a non-partisan, faith-based, national organization headed by clergy and lay people of faith with an active membership of over 100,000 religious people representing more than 50 faith traditions. The Interfaith Alliance is dedicated to promoting the positive role of religion as a healing and constructive force in public life.

The Jewish Council for Public Affairs, formerly the National Jewish Community Relations Advisory Council, an umbrella organization of 13 national and 122 local Jewish public affairs and community relations agencies across the United States.

People for the American Way Foundation, a nonpartisan citizens organization of over 300,000 members, established to promote and protect civil and constitutional rights, including First Amendment freedoms.

National PEARL, a diverse coalition of grassroots and national religious, educational, and civil organizations that seeks to preserve religious freedom and the separation of church and state in public education.

Soka Gakkai International-USA, a diverse American

Buddhist community with 300,000 members and 71 centers throughout the United States.

The Unitarian Universalist Association, a religious association of more than one thousand congregations in the United States, Canada, and elsewhere.

SUMMARY OF ARGUMENT

"[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion). This distinction underlies the Court's cases on prayer in the public schools – making room for private expressions of religious belief by students, on and off school grounds, but also assuring that the government itself neither influences nor sponsors student religious expression. *Amici* have long believed that the two principles behind this distinction are vital to protecting religious liberty; significantly, nearly all parties to this case have agreed upon them.

Distinguishing genuinely private from officially sponsored religious expression can give rise to close and difficult cases, particularly in the public school context. This is not such a case. Whatever the precise location of the line between private and official prayer in the public schools, prayer delivered under the Santa Fe Football Policy falls on the wrong side of that line – and by a wide margin.

First, the "invocation and/or message" is delivered as part of an official school-sponsored event, over which the school maintains near-total control. Instead of establishing a "forum" for student speech, the school district delegates to one student official responsibility for introducing the game, with an "invocation and/or message" that creates the "appropriate environment" for the school event to follow. JA 104. The school also provides that student with an audience, gath-

ered by the school for official purposes and required, for all practical purposes, to be present for the "invocation and/or message" as a condition of attending the entire school event. Under circumstances like these, the message of the student speaker is at least presumptively delivered on behalf of the school itself.

It may be possible, even in the context of an otherwise official school event, for a school to set aside a separate forum for the expression of purely private views, as to which the school itself remains strictly neutral. But this case does not raise that question, because the Santa Fe school district has not attempted to create such a forum. Unlike the fora at issue in the Court's "equal access" cases, the Football Policy does not allow for expression of a broad range of views and ideas, including religious views. Instead, it restricts student expression to a very few preferred messages – those consistent with the Policy's solemnity and sportsmanship goals – and then puts prayer, by terms, into that favored category. The expression "Winning isn't everything; winning is the only thing" is out of bounds, but prayer is in, and in expressly. The Policy does not put religious speech on an equal footing with secular speech, but favors religious speech over comparable secular speech. Because the school district has departed from neutrality, it is impossible to say that a student's decision to pray under the Policy is genuinely private, and not attributable at least in part to the government's expressed preference for prayer.

This is not the kind of help that religion wants or needs from government. Government-sponsored religious exercises hurt religious believers as well as non-believers. In communities sensitive to religious minorities, government involvement in religious activity leads inevitably to watered-down "nonsectarian" prayer, satisfying to few who take their religious commitments seriously. In other communities, official sectarian prayers track outright the beliefs of the dominant sect, excluding local religious minorities and making them outsiders in their own schools and towns. There is no good choice for government here, and no good role for government to play in the sponsorship of religious observances. The First Amendment spares the government this dilemma, by proscribing all forms of official prayer while preserving and protecting private prayer.

ARGUMENT

I. THIS COURT SHOULD REAFFIRM THE IMPORTANT DISTINCTION BETWEEN GOVERNMENT-SPONSORED RELIGIOUS ACTIVITY, PROHIBITED BY THE CONSTITUTION, AND PRIVATE RELIGIOUS ACTIVITY, CONSTITUTIONALLY PERMITTED AND PROTECTED.

"[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Mergens*, 496 U.S. at 250 (plurality) (emphasis in original). This distinction lies at the heart of the Court's "equal access" cases, which both permit private religious speech by students and protect that speech against official school discrimination. *See Widmar v. Vincent*, 454 U.S. 263 (1981) (public university may not deny student religious group access to forum generally open to public); *Mergens*, 496 U.S. at 226 (applying same principle to public high schools under Equal Access Act); *Rosenberger v. Rector & Visitors of Univ.*, 515 U.S. 819 (1995) (public university may not deny student religious publication access to benefit available to wide variety of other student publications). This result is grounded in the broader principle that the government must be "a neutral in its relations with groups of religious believers and non-believers," *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947): when private religious speech is included in a forum gener-

ally opened to private secular speech, the "message is one of neutrality." *Mergens*, 496 U.S. at 248 (plurality).

These two principles – the prohibition of government-sponsored prayer and the protection of private prayer – work in tandem to safeguard religious liberty. Because the government may not itself sponsor religious exercises in the schools, it cannot coerce religious belief, even indirectly, or use its stamp of approval to make religion relevant to a person's standing in his community. *See Wallace v. Jaffree*, 472 U.S. 38, 69 (1985) (O'Connor, J., concurring in judgment). This assures that private religious beliefs are just that – private, "the product of free and voluntary choice by the faithful," *id.* at 53, rather than the result of government pressure or influence. And because the government may not discriminate against private religious expression, it cannot control or manipulate religious choices by suppressing religious messages with which it disagrees. Both these principles flow from the same constitutional conviction: that "religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." *Lee v. Weisman*, 505 U.S. 577, 589 (1992). Together, these principles protect private religious choice from government interference of any kind.

Amici are thus in agreement with both petitioner and respondent that the Court should reaffirm the distinction between religious expression that is government-sponsored and thus prohibited, on the one hand, and religious expression that is purely private and thus protected, on the other. Like the school district, we believe that this case turns on "the distinction between direct government involvement in religious speech and government toleration of [private] religious expression." Pet. Br. at 19. A school policy that is neutral as to religion and produces religious speech only as a result of intervening and purely private decisions, Pet. Br. at 18, raises questions very different from those presented by this case.

While petitioner treats these two conditions – neutrality and independent private choice – as distinct, we think that they are related, for the reasons discussed just above: only if the government is neutral toward religion can a person's decision to engage in religious activity be deemed purely private, unaffected by government influence. Nonetheless, we are in basic agreement with the school district (and most of its *amici*) on the legal standard that governs this case, and our differences as to application should not overshadow the importance of this consensus.

II. THIS CASE FALLS ON THE WRONG SIDE OF THE LINE BETWEEN GOVERNMENT-SPONSORED AND PRIVATE PRAYER.

The school district seems at times to suggest that whether speech is governmental or private for Establishment Clause purposes turns simply on the identity of the speaker. *See, e.g.*, Pet. Br. at 19 ("Speech that is student-led and student-initiated results from the individual speaker's choices."). But that cannot be right. In the years prior to adoption of the Football Policy, Santa Fe High School gave the student council "chaplain" exclusive access to the public address system at home football games for the sole purpose of delivering a prayer. *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 810 & n.4 (5th Cir. 1999). This speaker was a student, and apparently decided for him or herself the precise content of the invocation. Nevertheless, we think it is clear – and nobody in this case appears to contest – that the student council chaplain spoke at football games *on behalf of the school*, so that his or her speech was subject to Establishment Clause constraints. The point here is simple but critical. Even private parties can speak for the government, *see Rosenberger*, 515 U.S. at 833-34 (when it "enlists private entities to convey its own message" government may regulate views expressed), or under circumstances that make their speech attributable to the government, *see County of Alle-*

gheny v. ACLU, 492 U.S. 573, 599-600 (1989) (attributing privately erected display in county courthouse to government). Labeling speech "student-led" or "student-initiated" does not by itself resolve the question of whether speech is government-sponsored or purely private.

More careful inquiry makes clear that any speech uttered under the Football Policy is government-sponsored so as to implicate the Establishment Clause. The student speech is an integral part of an official school event, with the selected student playing the role delegated to him or her by the school. *Amici* doubt that speech delivered as part of a school-sponsored official event like this one can ever be truly private for Establishment Clause purposes. But even if it can be, it is not here. The Football Policy is not neutral toward religion; on the contrary, it encourages and favors prayer. Any prayer that results under this policy is therefore attributable in significant part to the government and is not simply the result of private decision-making.

A. Speech Delivered as Part of Official School Functions Like Santa Fe Football Games Is Presumptively Attributable to the Government.

The school district and its *amici* picture a robust and freewheeling forum in which students, operating free of any significant school control and apart from any officially-convened audience, will air a wide range of private views. Under circumstances like those, as the Court held in *Mergens*, any speech delivered is likely to be attributable only to the individual speaker. 496 U.S. at 248-52. But this case is nothing like that. The student speech here occurs as part of an official school event over which school officials maintain full control. *Compare id.* at 251 (relying on absence of any official participation in student meetings under Equal Access Act). Students who are not interested in hearing the speech in question must nevertheless be in the audience as a condi-

tion of participating in the official school function. *Compare id.* at 251 (relying on absence of captive audience problem). And the school restricts entry to the so-called "forum" as well as the content of the message that may be delivered, so that there will be no "broad spectrum" of views represented. *Compare id.* at 252 (relying on open access and broad array of student groups). This case is not *Mergens*, and at an official function like school-sponsored football games the message of the single student permitted to speak is at least presumptively attributable to the school.

1. Santa Fe football games, like all high school football games, are directed and controlled by school officials. School officials decide who will participate in the games, and then oversee the activities of these football players, cheerleaders, band members, and other students. School officials schedule games and control the facilities in which they are played. Most directly relevant here, school officials direct the timing and content of activities at the games themselves, from pregame ceremony to half-time show to any postgame event. The Football Policy itself makes clear that Santa Fe is no exception to this general rule: a student "invocation and/or message" may be given during the pregame ceremonies only because the "board has chosen to permit" one. JA 104.

The control that Santa Fe officials maintain over football games as a whole extends to the "invocation and/or message" itself. School officials made the initial determination that a *single* student speaker, selected *once* a year to serve for the *entire* year, would be permitted to open Santa Fe football games with an "invocation and/or message." Although students elect the speaker, the election process is designed, authorized, and directed by the school. The school then implements and enforces the election outcome by giving the preferred speaker, and no other student, access to the public address system. School officials control the timing

and duration of the "brief" student speech. Finally, though the student speaker maintains some discretion over his or her "invocation and/or message," its basic content is prescribed by the school: the speaker is to introduce the official event to follow, by establishing the "appropriate environment" for the game. JA 104.

Very similar indicia of school control led this Court in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 267-73 (1988), to conclude that a student newspaper was not a forum for private speech, but instead a school-sponsored expressive activity. Though the student-journalists exercised some authority over the content of their speech, *id.* at 269-70, the school maintained significant control by, *inter alia*, selecting the editors of the paper, scheduling publication dates, and planning the layout of each issue. *Id.* at 268. As a result, student speech in this context was not "personal expression that happens to occur on school premises," *id.* at 570, protected against content-regulation by the First Amendment. Rather, it was a "part of the school curriculum," fully subject to the school's editorial discretion. *Id.* at 271; *see also Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (student speech at school assembly subject to school editorial control). The same principle applies here. When student speech occurs as part of activities that are as heavily regulated by the school as are the Santa Fe football games, the student speech is at least presumptively sponsored by the school itself.

2. By linking the speech in question to football games, Santa Fe officials gather an audience for the speech. For many students, attendance at football games, including the pregame ceremonies, is mandatory in the literal sense: cheerleaders and band members, as well as football players, are required to attend. JA 65. But school officials also have created a kind of "tie-in" for the benefit of the selected speaker: *all* Santa Fe students who wish to participate fully

in the school event, including the pregame festivities, must also sit through the student speech. The effect is that the only way to avoid the student message is to forgo the benefit of being a full participant in the high-school football game experience. And as petitioner's own *amici* emphasize, this benefit is important enough that few, if any, students could be expected to go without it: football games are "major community-wide social event[s]," serving as a "community bond" and the "very embodiment of a community's civic pride." Brief of *Amicus Curiae* Texas Association of School Boards Legal Assistance Fund at 5-7. In other words, students absent themselves only at the expense of putting themselves outside their own communities. *See also Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 831 (11th Cir. 1989) (discussing "powerful incentive" for students to attend football games). By tying the speech to so valuable a benefit, officials produce what is effectively a captive audience for the student message. *See Lee v. Weisman*, 505 U.S. 577, 586, 595 (1992) (graduation is mandatory in "fair and real" sense because students cannot avoid it except by "forfeiture" of "intangible benefits").

Our primary point here is a descriptive one. The government is most unlikely to gather a captive audience – and especially an audience of school children – for speech that it does not control and of which it does not approve. It is hard to imagine, for instance, a school turning an official sporting event with a stadium full of students into a true open forum like the one in *Mergens*, 496 U.S. at 251-52, complete with controversial "religious, political [and] philosophical" views aired by speakers over whom the school could exert no content-based editorial control. Indeed, it is in part because speech delivered to captive audiences of school children is so likely to be associated with the school itself that schools enjoy the legal authority to regulate that speech. *See Hazelwood*, 484 U.S. at 266-67, 271-73; *Fraser*, 478 U.S. at 685-86. When the government gathers a captive audience of

school children for speech, then, it is fair to presume that the government sponsors that speech.

The captive audience at Santa Fe football games is relevant in a second respect: it raises the stakes on the inquiry by introducing the potential for government coercion of religious activity. When student religious speech occurs in settings that are separate from any other school activity – when, for instance, a student religious group meets after school on school premises – then students who wish to avoid the religious activity may easily do so, and there is "little if any risk" of official coercion. *Mergens*, 496 U.S. at 251. But when, as here, student religious speech is tied to some other important activity so that attendance is either actually or effectively mandatory, then the stage is set for coerced participation in a religious exercise. *See Lee*, 505 U.S. at 592-94 (discussing "subtle coercive pressure" that results when audience of students made captive to religious activity). In cases like this, the Court must carefully police the line between purely private and government-sponsored religious activity. Unless the government maintains the most scrupulous neutrality toward religion in these settings, the end result will be official coercion of religious activity.

Indeed, petitioner's theory of this case would allow for student-delivered prayers not only at football games and graduation, but also at student council meetings, choir practices, and before drama club productions. Moreover, it would extend even into the classroom, where the presence of dissenting students is literally compelled by the state. There is no reason, under the school board's argument, why Santa Fe could not add to its graduation and football policies a "Classroom Speech Policy," delegating to one elected student – with the approval of a majority of the student body – the authority to open each school day with an "invocation and/or message" delivered over the school public address system. *Cf. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d

274, 277-78 (5th Cir. 1996) (state School Prayer Statute allowing for "student-initiated" prayer at "compulsory or non-compulsory" school events violates Establishment Clause except as applied to graduation); *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (state statute allowing for classroom prayer led by student volunteers violates Establishment Clause). Labeling "private" what is in fact government-sponsored religious expression reopens the door to official classroom prayer exercises and the resulting coercion of religious activity. *See Engel v. Vitale*, 370 U.S. 421, 430-431 (1962) (official classroom prayer recitations violate Establishment Clause in part because of coercive effect).

3. Santa Fe football games historically have been a forum for official *government* speech. Until adoption of the Football Policy in 1995, time at the beginning of football games was reserved for the government's own speech, in the form of an invocation delivered over the public address system by the student council "chaplain." *See infra* p. 7. The fact that the school has in the past reserved this same time during pregame ceremonies for its own speech supports the presumption that the student who now speaks during that time is exercising – and will be perceived as exercising – official authority delegated to him or her by the school.[2]

This factor distinguishes this case from that of a valedictorian's address at a school graduation. *Cf. Doe v. Madison School Dist.*, 147 F.3d 832 (9th Cir. 1998) (upholding policy permitting students chosen on academic grounds to deliver "any . . . pronouncement," including "prayer," at graduation), *vacated as moot*, 177 F.3d 789 (1999). In at least some school districts, there is a long history of valedictorians who speak in an entirely personal capacity at graduation – a

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[2] The reasonable perceptions of government approval of religion that will result from the Football Policy are discussed in Part II.C., *supra*.

tradition, that is, of isolating a distinct and robust forum for genuinely private speech in the midst of what is otherwise an official event. But here the history is precisely the opposite, and only heightens the presumption that the student speech is attributable to the government.

* * * *

The result in this case would be obvious if the Football Policy designated the school principal, rather than a student, to deliver the "invocation and/or message" before football games. Even if the principal were directed to choose the content of his message for himself, we think it would be clear that he spoke in an official and not a private capacity. But what would make it clear is precisely the same context that obtains here: that the speech is part of an official school activity over which the school maintains full control, for which the school gathers an audience, and during which the school has previously communicated its official views. Together, these factors create a powerful presumption that any speech – even student speech – delivered as part of this official school event is attributable to the school itself. This is not a technical legal point about burden-shifting so much as a common-sense evaluation of the way things usually are – and usually, student speech that is delivered as part of an official school activity like Santa Fe football games is part of the school's own program.

B. The Presumption of Government Attribution Is Not Overcome in This Case.

Amici doubt that the presumption of official sponsorship just described could ever be overcome with respect to speech delivered as part of Santa Fe football games, given the degree of control exercised by the school over the entire event and the problems raised by the presence of a captive audience. But *amici* are certain that the presumption has not been overcome here. This is not a case in which a school has

opened a neutral and open forum in an otherwise official context, raising questions about whether a student speaker's decision to pray might be thought of as genuinely independent and private. *Cf. Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 487 (1986) (government funding reaches religious institutions "only as a result of the genuinely independent and private choices of aid recipients"). Even if there are circumstances under which the private choice of a student speaker could act as a "circuit-breaker," severing the presumed connection between the official event, on the one hand, and the student prayer, on the other, *see Rosenberger*, 515 U.S. at 886 (Souter, J., dissenting), they are not present here.[3] The Football Policy is not neutral toward religion, but instead skews the "forum" in the direction of prayer. For this reason alone, a student's decision to pray cannot be deemed purely private, and there is no genuinely "independent discretion" to break the link between the official school event and the speech delivered.

1. Of the universe of possible messages that could be delivered before a football game, the Football Policy singles out "invocation," and only invocation, as expressly approved. This is not neutral as to religion. If a school district wants to create an open forum at the start of football games for student speech, including, at the speaker's option, religious speech, the neutral way to do so is with a policy that simply provides for delivery of a "message" to be chosen by the speaker. A school district might even attempt an exhaustive list of the types of speech available to the student

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[3] We do not count the student referendum in this case among the circumstances that might help to distance the government from the ultimate message delivered. On the legal insignificance of the election, we are in substantial agreement with the position set out in respondent's brief. If, as here, a minority of the student body has a valid constitutional objection to being subjected to prayer while effectively captive in the audience, then that objection is surely no more subject to override by vote of the majority than would be any other constitutional entitlement.

speaker. *See Doe v. Madison*, 147 F.3d at 834 (upholding graduation policy allowing valedictorian to deliver "'an address, poem, reading, song, musical presentation, prayer, or any other pronouncement'"). But specific designation of prayer and prayer alone in the Football Policy gratuitously singles out religious expression for special approval, and crosses the line between government neutrality and government favoritism. This was the principle behind *Wallace v. Jaffree*, 472 U.S. 38, 60-61 (1985), in which the Court invalidated an Alabama statute that authorized a moment of silence during the school day for "meditation or voluntary prayer" reasoning that inclusion of "voluntary prayer" reflected an intent to "characterize prayer as a favored practice." *See also* Walter Dellinger, *The Sound of Silence: An Epistle on Prayer and the Constitution*, 95 Yale L. J. 1631, 1636 (1986) (discussing *Jaffree* and questioning whether hypothetical statute providing for moment of silence for "meditation or erotic fantasy" could be deemed truly "neutral" as to erotic fantasy). The same principle governs this case, as well.

The school district's only response to *Jaffree* is to emphasize that the Alabama statute at issue there effectively added the words "or voluntary prayer" to an existing statute already providing for a moment of silence for "meditation." 472 U.S. at 59. Here, by contrast, the preexisting practice was one that permitted prayer and only prayer at Santa Fe football games, *see infra* p. 13, so that what the Football Policy – at least, the second version of the Football Policy – added in 1995 was not the "invocation" but the option of a secular "message." Pet. Br. at 26-28.[4] This is irrelevant. Nobody in this case is arguing that the district's decision to

[4] The school district's first version of the football policy, adopted in August 1995, added nothing at all, permitting only student-approved and delivered "invocations" at football games. *See* "Prayer at Football Games," JA 99-101.

include "and/or message" in the 1995 Football Policy itself violated the Establishment Clause. The dispute here is over the Football Policy as promulgated, in its entirety. And whether "invocation" comes first or is added second, the effect is the same, and the same as in *Jaffree*: prayer is characterized as a favored activity.[5]

Relying on the dissenting opinions in *Jaffree*, some of petitioner's *amici* suggest that express reference to "invocation" in the Football Policy is necessary because students might otherwise believe that religious speech before football games is forbidden. *See* Brief of *Amici Curiae* Congressman Steve Largent and Congressman J.C. Watts at 23-25. This contention, of course, was rejected by the Court in *Jaffree* itself. In any case, there seems never to have been much doubt about the permissibility of prayer at football games under the school district's policies – which, as petitioner itself emphasizes, allowed for prayer and only prayer until adoption of the second Football Policy in October 1995. And prayer, of course, remains the sole form of student speech permitted under Santa Fe's graduation policy, which calls for student-delivered "invocations and benedictions for the purpose of solemnizing" graduation ceremonies. Pet. App. at G-1. No student "mature enough" to understand the distinction between private and governmental speech, *see Mergens*, 496 U.S. at 250, will labor under the misimpression that religious speech has been eliminated "wholesale" from the Santa Fe schools, *see* Brief for Largent & Watts at 24.

[5] In a footnote, petitioner also quotes a sentence from Justice O'Connor's concurring opinion in *Jaffree*, recognizing that inclusion of the word "prayer" in a moment of silence statute will not in all cases "encourage[] prayer over other specified alternatives." Pet. Br. at 26 n.10. But use of the word "prayer" was, for Justice O'Connor, important evidence that the Alabama statute had the purpose and effect of endorsing prayer as an approved activity. 472 U.S. at 76-79 (O'Connor, J., concurring in the judgment).

2. A more fundamental problem with the Football Policy is that it does not allow for a broad range of speech by students, creating an open forum that naturally encompasses religious as well as secular speech. *Compare Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (university forum "generally open" to wide spectrum of student speech); *Mergens*, 496 U.S. at 252 (same in high school); *Rosenberger*, 515 U.S. at 824 (funding for wide array of student journals); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 758-59 (1995) (state-owned plaza open to all speakers without regard to speech content). Instead, the Policy designates a very narrow range of messages that may be delivered by the student speaker, and then puts prayer into that specially approved category. This is not government neutrality toward religion.

The Football Policy allows for delivery of those "invocation[s] and/or message[s]" that are "consistent with the goals and purposes" of the Policy. Those goals and purposes, in turn, are to "solemnize the event" and "to promote good sportsmanship and student safety." (The Policy also refers to establishing an "appropriate" environment for the football game, which appears to be an allusion to the two purposes expressly listed: solemnization and promotion of good sportsmanship.) On its face, then, the Policy permits the following types of speech and only these types of speech: invocations (at least, those invocations that are suitably solemn and sportsmanlike), messages that solemnize the event, and messages that promote good sportsmanship.[6]

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[6] The fact that the school district has disclaimed authority to pre-approve student speeches, Pet. Br. at 11, does not, of course, negate the Policy's limits on student speech. Speech can be restricted by *post hoc* enforcement of limits as well as by prior restraints, and the school district has not disavowed imposition of penalties after the fact for unapproved speech. This point is obvious, but also very important to *amici*. Imagine, for instance, that a school with an Equal Access Act forum were to promulgate a policy that by terms excluded religious speech from the

A policy as restricted as this one does not put religious speech on an equal footing with comparable secular speech, giving religious speech no more than "the same access to a public forum that all other [speech] enjoy[s]." *See Pinette*, 515 U.S. at 763-64 (opinion of Scalia, J.). This Court's cases involving religious speech in open fora always have assumed that what is comparable to religious speech for purposes of an "equal access" analysis is ideological or political speech, or other speech that is likely to be controversial. *See Mergens*, 496 U.S. at 252 (access under Equal Access Act extends to "a Jewish students' club, a Young Democrats club, or a philosophy club devoted to the study of Nietzsche"); *Pinette*, 515 U.S. at 757-58 (square open for "free discussion of public questions" and used previously by "[s]uch diverse groups as homosexual rights organizations, the Ku Klux Klan, and the United Way"); *Rosenberger*, 515 U.S. at 841 (withdrawals from activity fund permitted "to cover the whole spectrum of speech, whether it manifests a religious view, an antireligious view, or neither"). The Football Policy, on the other hand, explicitly authorizes the expression of religious viewpoints through "invocations," but does not allow for expression of any other kind of ideological or political view. A student wishing to deliver a secular message is limited to one that solemnizes the event or promotes good sportsmanship – leaving no room for, say, a speech endorsing a candidate for political office or even urging students to vote, much less the "antireligious" speech conjured up by one of petitioner's *amici*. *See* Brief for *Amicus Curiae* Christian Legal Society at 28 (erroneously suggesting that Policy allows for expression of "whole spectrum" of student views, including "antireligious" views).

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forum. Surely the school could not save that policy, which on its face violates the Act, simply by refraining from pre-approving student group activities.

The case of the school valedictorian who may speak on any topic she chooses is distinguishable on this ground, as well. When a valedictorian or other graduation speaker may use her time to criticize United States involvement overseas, or to endorse single parenthood, or to deliver any number of ideological and controversial messages, then religious expression by the same speaker falls more neatly under the case law described just above and may be, in the words of Justice Souter's oft-quoted footnote in *Lee*, "harder to attribute" to the government. 505 U.S. at 630 n.8 (Souter, J., concurring). *See Doe v. Madison*, 147 F.3d at 834-35 (upholding graduation policy that allows valedictorian unrestrained discretion to express any view, including religious views). But this is a much easier case than that one. Here, religious views are permitted in a "forum" that allows for no other ideological or political views, creating an effect that is not neutral but partial to religion.

It might be argued that the school can, in this context, favor religious speech over political and ideological speech because an "invocation" is related to the subject at hand – a football game – in a way that a political or ideological speech is not. What is comparable to religious speech in this setting, the argument would be, is secular speech on the subject of football. But even assuming, *arguendo*, that "comparable" speech could be defined so narrowly, it would still be the case that the Football Policy favors religious speech over comparable secular speech. The subject of an imminent high school football game allows, in theory, for a variety of perspectives or messages: that a football game is a raucous occasion for fun, for instance, or that "winning isn't everything, it's the only thing," or that the other team is inadequate in some way that strikes high school students as humorous. But none of these messages is permitted under the Policy. Even within the category of game-related speech, the Policy singles out a very few preferred approaches and messages, including prayer, and excludes all the rest.

For that reason, the school district's insistence that the Football Policy does not favor "invocations" over "messages," Pet. Br. at 18, even if it were true (*but see* discussion in Part I.B.1, *infra*), would be beside the point. Petitioner has made a simple category mistake. The problem we identify here is not that the Policy favors prayer over the limited range of secular speech it permits. The problem is that the Policy favors prayer over all of the secular speech it does *not* permit: the wide range of political, ideological, and other speech that is precluded by a Policy limiting the ideas to be expressed to those that promote solemnity and sportsmanship. It is as though the vocational education program at issue in *Witters*, instead of funding training in "professions, business or trades" generally, 474 U.S. at 483, funded only training at divinity and law schools. On the school district's account, the program remains neutral: religious and secular training are both available, with the choice left to the aid recipient. Pet. Br. at 18. But the program is not neutral as between religion and all of the professional and business educations excluded, and it is this more substantive kind of neutrality that the Court demanded in *Witters* as a condition of upholding aid to religious education. 474 U.S. at 488.

Petitioner may attempt to avoid the conclusion that the Football Policy favors religious speech by arguing that the category of comparable secular speech in this case is not political or ideological speech, nor even all football-related speech, but only secular speech that solemnizes football games and promotes good sportsmanship. The forum created by the Policy, the argument would go, is limited to promotion of solemnity and sportsmanship, and the Policy includes all secular speech, as well as religious speech, that falls within forum boundaries. But as this Court explained in *Rosenberger*, a government program for transmitting so narrow and specific a message – "This football game is a solemn event, for which good sportsmanship is appropriate" – is not a forum for private speech at all. 515 U.S. at 833-35.

Instead, it is a vehicle by which the government enlists private parties, like the doctors in *Rust v. Sullivan*, 500 U.S. 173 (1991), to speak *for the government*, "convey[ing] a governmental message" rather than their own views. *Rosenberger*, 515 U.S. at 833. On this understanding of the Football Policy, student speakers communicate the school's "own favored message," subject to the school's editorial control, *id.* at 834, but also to Establishment Clause constraints. And under those constraints, the message cannot be a prayer.

This may in fact be the proper way to categorize student speech delivered under the Football Policy. That Policy certainly appears to reflect a "particular policy of [the school district's] own," *id.* at 833, about how football games are to be understood and played. The most recent Santa Fe football policy, adopted in 1999, confirms that the school district has in mind a very specific message for the student speaker: layered on top of the original Football Policy is the advice that the speaker may

> welcome or greet the fans and the opposing team and/or commend them for their achievements. Consistent with the educational mission of the [school district], the pre-game message should be respectful, encouraging, and positive. The entirety of the speaker's message should serve these goals.

Brief for *Amicus Curiae* Marian Ward, App. D. Those are perfectly laudable government goals, of course, but there can be no mistaking the fact that they are the *government's*, and that the speaker is not free to give a message that does not serve them. And treating student speech under the Policy as "governmental" explains why it is that the Policy may prefer some viewpoints (sportsmanship is more important than victory) over others (victory is more important than sportsmanship): although the government may never discriminate based on viewpoint when it regulates *private* speech, when the government enlists private parties to convey its *own* message it is as though the government itself is speaking, and it is then "entitled to say what it wishes." *Rosenberger*, 515 U.S. at 833; *see also Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 674 (1998) (when government speaks through third parties, content generally left to government's editorial discretion).

But whether or not a student "invocation and/or message" delivered under the Football Policy is "governmental" in the sense described in *Rosenberger*, the government has "spoken" here already, through an official Football Policy that, as we have shown, favors religious expression. Instead of neutrality toward religion, the Policy reflects a preference for prayer over comparable secular speech. That is enough by itself to violate the Establishment Clause. *See Wallace*, 472 U.S. at 60; *County of Allegheny v. ACLU*, 492 U.S. 573, 593 (1989).[7] The preference for prayer also makes it impossible to say that prayers delivered under the Policy result solely from "the genuinely independent and private choices" of students, and are not attributable at least in part to the government's influence. This case, then, does not raise the question of whether entirely private decision-making might break the presumptive link between an official school event and a prayer delivered as a part of that event.

C. The Football Policy Creates an Impression of Governmental Endorsement of Religion That Is In Fact Accurate.

In light of both the official nature of Santa Fe football games, described in Part I.A. of this brief, and the preferred status that the Football Policy affords to religious speech,

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[7] This would be so even if no student ever delivered a prayer under the Policy: the government may not favor or encourage religion on the condition that its efforts yield no direct success. Petitioner's reliance on the facial status of the challenge to the Football Policy, *see* Pet. Br. at 16-17, is unavailing on this ground alone.

discussed in Part I.B., reasonable observers will attribute to the government approval of any student prayer that is delivered under the Policy. And because the Football Policy does indeed favor prayer over comparable secular speech, that attribution will be correct. The Football Policy, in other words, creates an "impression of endorsement that *is in fact accurate*." *Pinette*, 515 U.S. at 766 (plurality) (emphasis in original). Under any understanding of the endorsement standard relied on by this Court, *compare Pinette*, 515 U.S. at 764, 766 (plurality) (endorsement standard implicated when government actually favors religion) *with id.* at 774 (O'Connor, J., concurring) (endorsement standard may be implicated where "private religious conduct has intersected with a neutral governmental policy"), this constitutes governmental endorsement of religion that is forbidden by the Establishment Clause.

Nor can a disclaimer, a possibility raised by some of petitioner's *amici*, cure this problem. Disclaimers may be important in ambiguous cases that involve incorrect perceptions that the government has approved or favored religion. In such cases, disclaimers may help to clarify that private religious expression is not in fact attributable to the government. *See Pinette*, 515 U.S. at 782 (O'Connor, J., concurring); *id.* at 793-94 n.1 (Souter, J., concurring); *Rosenberger*, 515 U.S. at 823, 841; *Mergens*, 496 U.S. at 270 (Marshall, J., concurring in judgment); *see also* Brief of Christian Legal Society at 15-16 (disclaimer as remedy when private religious speech misattributed to state). But when the government has in fact favored private religious expression, so that the private expression actually is attributable to the government, then disclaimers are beside the point: this Court never has suggested that the government may favor religion so long as it simultaneously denies that that is what it is doing. *County of Allegheny* is a good example. Having granted preferential access to the County Courthouse for a creche displayed by private parties – a creche that was, in fact, accompanied by a disclaimer identifying the private nature of the display – the government could not avoid an Establishment Clause violation simply by "disclaiming" a preference for religion, and the Court never suggested otherwise. 492 U.S. at 600-01. For the same reason, the school cannot "disclaim" approval of religious expression here.

Because this case involves an "accurate" impression of endorsement, the Court need not inquire into whether there might be a reasonable *misperception* that the government has favored private religious speech, or what role a disclaimer might play in that event. But we note that even if the school district had adopted a neutral version of the Football Policy, the indicia of endorsement would be even stronger here than in *Pinette*, in which five Justices concluded that a privately-displayed cross in a neutral open forum impermissibly endorsed religion, at least absent an adequate disclaimer. *See* 515 U.S. at 776 (O'Connor, Souter, & Breyer, JJ., concurring in part and concurring in judgment) (disclaimer prevents Establishment Clause violation); *id.* at 806-07 (Stevens, J., dissenting) (Establishment Clause violation); *id.* at 817-18 (Ginsburg, J., dissenting) (same). What indicated government approval in *Pinette* was that the cross stood in front of a statehouse, in "close proximity" to official government buildings. *Id.* at 776 (O'Connor, J.). Here, of course, the "invocation and/or message" is delivered as part of an official government event, and enjoys the same "place of prominence" with respect to official activity that concerned the Court in *Pinette*. *Id.* at 785 (Souter, J.). But in *Pinette*, at least, the forum was open to all comers, and had been used in the past by groups as diverse as "homosexual rights organizations, the Ku Klux Klan, and the United Way," *id.* at 758, counteracting the message of endorsement, *id.* at 782 (O'Connor, J.,); *see also Mergens*, 496 U.S. at 252 ("broad spectrum" of officially recognized groups counteracts message of endorsement). Here, by contrast, access to the "forum" is so selective, and the message delivered so tightly

controlled, that there will be no broad range of groups or views represented. Instead, it becomes significantly more likely that the "forum" will be dominated by religious speech, raising special endorsement concerns. *Pinette*, 515 U.S. at 777 (O'Connor, J.); *see also Widmar v. Vincent*, 454 U.S. 263, 275 (1981) (relying on "absence of empirical evidence that religious groups will dominate" forum to uphold equal access policy).

Finally, and perhaps most important, there is "the history and context of the community and forum" in which the religious expression occurs. *Pinette*, 515 U.S. at 780 (O'Connor, J.) The reasonable observer here will know that until 1995, time at the start of each Santa Fe home football game was reserved exclusively for *government-sponsored* prayer, delivered by *a student*. *Id.* at 781 (reasonable observer will know "how the public space in question has been used in the past"). Standing alone, that would be enough to support a very reasonable inference that when a student delivers a prayer at the start of a Santa Fe football game today, he or she is following in the same tradition. But "an informed member of the community," *id.* – and certainly all members of the student community – will also know of the school district's *graduation* policy, which officially sanctions student-delivered "invocations and benedictions" only. The same well-informed community member may also know that the school district's initial version of the Football Policy, JA 99-101, would have mirrored the graduation policy, allowing only for student-delivered invocations, *see Wallace*, 472 U.S. at 77 (O'Connor, J.) (relying on legislative history in endorsement analysis) – in defiance of governing Fifth Circuit law. *See Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (limiting prayer by student referendum to graduation and holding such prayer impermissible at athletic events). This would surely be a case of the sort that Justice Souter had in mind in *Pinette*, in which the "indicia of endorsement," taken together, are so strong that they

would "outweigh the mitigating effect of [any] disclaimer." 515 U.S. at 794 n.2. When resistance to the School Prayer Cases and to *Lee* is as manifest as this, it is apparent to the reasonable observer, and the message the government sends is that nothing will interfere with its support of prayer. Against this background, it is perhaps not surprising that this case, as we have shown, involves *actual* and not merely *perceived* favoritism toward religion, making it an easy one under any of the standards suggested in *Pinette*.

III. GOVERNMENT-SPONSORED RELIGIOUS EXERCISES HURT RELIGIOUS BELIEVERS AS WELL AS NON-BELIEVERS.

The constitutional prohibition on government-sponsored religious observances serves several ends. It protects the government itself from debilitating power struggles, as religious groups compete for control over official prayers. *See Lee*, 505 US. at 607 (Blackmun, J., concurring). It protects the freedom of conscience of non-believers against government coercion. *Id.* at 605-06. But *amici* would like to emphasize that the prohibition on government-sponsored religious exercises also protects religious believers themselves.

When the government sponsors prayers, it has two basic options. In an effort to be sensitive to minority interests, the government can prescribe a particular form of prayer, one that deletes indicia of any particular faith and leaves only references to an anonymous deity. This, of course, is the approach taken by the Fifth Circuit in the case below, requiring that student prayers delivered at graduation be "nonsectarian" and "nonproselytizing." 168 F.3d at 822. The second option is the preferred approach of the Santa Fe school district: the government can sponsor manifestly sectarian prayer and unrestrained proselytizing. Both these governmental choices are bad, and both are bad for religious believers.

When the government censors public prayers, stripping them of sectarian references, the only thing left is a kind of least-common-denominator ecumenism, prayers designed to appeal to the largest possible audience. The government's efforts can never be entirely successful: even watered-down prayer to an unnamed deity is a particular form of prayer, and in this sense, the term "nonsectarian prayer" is an oxymoron. But by removing from religious observance those things on which different faiths are most likely to disagree, the government is left with an abstract and impersonal God that nearly all faiths reject. The result is unacceptable to many believers who take their own faiths seriously.

Moreover, the attempt to be inclusive – well-intended as it is – may actually amplify the message of exclusion to those left out. Because such prayers are carefully orchestrated not to offend anyone who counts in the community, the message to those who are offended is that they do *not* count – that they are not important enough to avoid offending. Again, it is not only non-believers who will be excluded or offended by prayers in these cases. "Nonsectarian" prayers also exclude serious particularistic believers, those who take their own form of prayer seriously enough that they do not want to participate in somebody else's. Believers who would not pray at all before a football game, those who would pray only in private, those who would pray only to Jesus, or Mary, or some other intermediary, those who would pray in Hebrew, or Arabic, or some other sacred tongue, all would be excluded or offended by a nonsectarian prayer delivered under the Football Policy.

We are of course sympathetic to the good-faith concerns that prompt government officials, like the Fifth Circuit here, to choose nonsectarian prayers for official public events. But as the experience in the Fifth Circuit suggests, this approach itself raises significant issues. Already legal disputes have arisen over the precise boundaries of "nonsectarian"

prayer, 168 F.3d at 822 (district court erred by defining "nonsectarian" too broadly), and more can be expected to follow, *see Lee*, 505 U.S. at 616-17 (Souter, J., concurring) (discussing fine line between sectarian and nonsectarian prayer). Adhering to this ill-defined limit is difficult enough when the government itself is leading the prayer. But when, as in this case, the government sponsors the prayer of a private party, a "nonsectarian" restriction almost inevitably turns the government into a censor of prayer, charged with assuring that prayers composed by religious believers conform to the government's view of what is sufficiently enlightened and tolerant. Any program of government-supported prayers that leads to such a result is profoundly adverse to the interests of religious believers.

But the government's other option – sponsorship of sectarian prayer and proselytizing – is also unattractive. In most communities, sect-specific prayers at official events will reflect the beliefs of the religious majority. This case is a good example: selection of speakers by majority vote under the Football Policy virtually assures that the prayers delivered will be those of the dominant religious group. Local religious minorities will be systematically excluded by officially-sponsored sect-specific prayers.

That sense of exclusion is likely to be deeply felt. "[A] prayer which uses ideas or images identified with a particular religion may foster a different sort of sectarian rivalry than an invocation or benediction in terms more neutral." *Lee*, 505 U.S. at 588. When the government sponsors sectarian prayer, it deliberately forgoes any effort to be inclusive, and the message to religious minorities could not be plainer: You are not important enough to this community for us even to go through the motions of trying to make you feel included. And when the government, as the school district would like to do here, disclaims any limits on the prayers it sponsors, it must expect more in the way of sectarianism

than a reference to Jesus. Millions of Americans believe that all religions are not equal, and that theirs is better, or even the one true faith. When that is the message of prayers that are officially authorized, the impact on adherents of other faiths is especially hurtful.

This problem – whether to impose a "nonsectarian" condition on officially-sponsored prayers or instead to allow for manifestly sectarian religious exercises – is intractable. Both choices are unacceptable, and both hurt religious believers. It is a central function of the First Amendment to avoid this dilemma by prohibiting government-sponsored prayers of any form, while ensuring that private prayer is preserved and protected.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX A

INTERESTS OF THE AMICI

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, and religious rights of American Jews. It believes that the separation of church and state is essential to the well being of American Jewry and has participated in almost all of this Court's cases involving that principle.

* * *

The American Jewish Committee ("AJC"), a national organization of approximately 100,000 members and supporters, was founded in 1906 to protect the civil and religious rights of Jews and is dedicated to the defense of religious rights and freedoms of all Americans. AJC is committed to the belief that separation of religion and government is the surest guarantee of religious liberty and has proved of inestimable value to the free exercise of religion in our pluralistic society. In support of this vital principle, AJC through the years has filed numerous briefs in this Court. We do so again in the conviction that officially sanctioned religious observances of any kind do not belong in public schools.

* * *

Americans United for Separation of Church and State is a national, public interest organization committed to preserving separation of church and state and religious liberty. Americans United believes that a secular public school system is a cornerstone of our democracy and that matters of faith should be directed by the home and the church, not by public school officials. On behalf of its members and other individuals, Americans United has participated in many cases involving school prayer and other religious activities in

school settings, and is serving as counsel in *Chandler v. James*, No. 99-935, currently pending before this Court.

* * *

The Anti-Defamation League ("ADL") was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial and religious prejudice in the United States. ADL has always adhered to the principle that these goals and the general stability of our democracy are best served through the separation of church and state and the right to free exercise of religion. To that end, ADL has filed *amicus* briefs in such cases as *Lee v. Weisman*, 505 U.S. 577 (1992), *Witters v. Washington Dep't of Services for the Blind*, 474 U.S. 481 (1986), *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373 (1985), *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and *School Dist. v. Schempp*, 374 U.S. 203 (1963). ADL is able to bring to the issues raised in this case the perspective of a national organization dedicated to safeguarding all persons' religious freedoms.

* * *

The Council on Religious Freedom is a non-partisan, non-profit national advocacy group that appears frequently in court on issues of religious freedom and the separation of church and state. The Council most recently argued the Supreme Court case regarding the use of taxpayer funds by private religious schools, *Mitchell v. Helms*. The Council has thousands of supporters throughout all fifty states, all of whom are concerned with minimizing the role that government plays in religious matters. Due to its ongoing advocacy and educational efforts on church/state issues, the Council has a strong interest in the outcome of the present case.

* * *

Hadassah, the Women's Zionist Organization of American, Inc., is the largest women's and the largest Jewish

membership organization in the United States, with over 300,000 members nationwide. Founded in 1912, Hadassah is traditionally known for funding and maintaining health care institutions in Israel. However, Hadassah also has a proud history of protecting the rights of the Jewish community in the United States. Hadassah has long been committed to the protection of the strict separation of church and state that has served as a guarantee for religious freedom and diversity. Hadassah has participated in numerous *amicus* briefs upholding this fundamental principle. Hadassah opposes any effort to bring organized religion into the public schools, including the introduction of officially sponsored, organized or sanctioned prayer at public school sporting events or programs.

* * *

The Interfaith Alliance is a non-partisan, faith-based, national organization headed by clergy and lay people of faith with an active membership of over 100,000 religious people representing more than 50 faith traditions. The Interfaith Alliance is dedicated to promoting the positive role of religion as a healing and constructive force in public life.

As The Interfaith Alliance looks to the next century, we recognize that positive sea-change in our society will only occur through interfaith cooperation, drawing not on dogma but rather the shared principles that lie at the heart of our nation's diverse religious landscape. A commitment to core values, including compassion, civility, and mutual respect for human dignity and diversity, unite us as a people of faith and goodwill.

The Interfaith Alliance mobilizes and empowers religious leaders and other people of faith to play a critical role in the life of our nation by participating in the political process. Civic participation is at the center of our mission and program. All people of faith have the responsibility and the

potential to act as agents of renewal in our increasingly divided nation.

Our religious traditions teach that every individual is divinely endowed with infinite dignity and worth. As people of faith we embrace our religious diversity and work together to make our society more inclusive, our politics more civil, and our nation more appreciative of the strength of our diversity. We believe that we can have a powerful healing effect on the civic life of our nation when we build acceptance, trust, and compassion in civic affairs.

* * *

The Jewish Council for Public Affairs (JCPA), formerly the National Jewish Community Relations Advisory Council, is an umbrella organization of 13 national and 122 local Jewish public affairs and community relations agencies across the United States. Founded in 1944, the JCPA is committed to the dual mission of safeguarding the rights of Jews here and abroad and also promoting a just society for all Americans. The JCPA believes that the Establishment Clause is an essential bulwark in protecting the religious freedoms of people of all faiths, and it has therefore participated as *amicus* in numerous Establishment Clause cases before this Court, most recently, *Mitchell v. Helms*. The Union of Orthodox Jewish Congregations of America and the Jewish Community Relations Council of New York abstain from JCPA's participation in this brief.

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People for the American Way Foundation ("People For") is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights, including First Amendment freedoms. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, People For now has more than 300,000 members nationwide. People For has

frequently represented parties and filed *amicus curiae* briefs in litigation seeking to defend First Amendment rights, including cases such as *Lee v. Weisman* concerning school prayer and the separation of church and state. People For has joined in filing this *amicus* brief in order to help vindicate the important First Amendment principles at stake in this case, particularly the principle that government-sanctioned prayer at public school events violates the First Amendment. Moreover, as an organization including numerous religious leaders and individuals, People For strongly believes that such government-sanctioned prayer will damage religious liberty for people of faith in our country.

* * *

National PEARL is a diverse coalition of grassroots and national religious, educational, and civic organizations that seeks to preserve religious freedom and the separation of church and state in public education. Cases in which National PEARL recently has been involved include *Agostini v. Felton*, 521 U.S. 203 (1997); *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994); and *Edwards v. Aguillard*, 482 U.S. 578 (1987).

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Soka Gakkai International (SGI)-USA, established in 1960, is a diverse American Buddhist community with 300,000 members and 71 centers throughout the United States. SGI-USA is committed to the principles of both free religious expression and separation of church and state as embodied in the First Amendment of the United States Constitution, and joins this brief in the interests of protecting these fundamental rights.

* * *

The Unitarian Universalist Association is a religious association of more than one thousand congregations in the United States, Canada and elsewhere. Through its democ-

ratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. The Association has adopted numerous resolutions affirming the principles of separation of church and state and religious freedom. In particular, the Association has consistently adopted resolutions opposing all deviations from religious neutrality in public schools including government sponsored devotions and prayers.